UNITED STATES BANKRUPTCY APPELLATE PANEL

OF THE TENTH CIRCUIT

IN RE PETER COULTER, Debtor.	BAP No. CO-12-013
PETER COULTER, Appellant, v. JAMES DAVIS, doing business as Auto Recyclers, FERYDOON ASGARI, AR & BA, LLC, JERRY PRIDDY, GARY BERGMAN, DAVID JONES, and S-LINE MOTORSPORT LLC, Appellees.	Bankr. No. 11-22535 Chapter 13 ORDER GRANTING MOTION TO DISMISS APPEAL AS INTERLOCUTORY May 3, 2012

Before CORNISH, MICHAEL, and SOMERS, Bankruptcy Judges.

The matter before the Court is the Motion to Dismiss Appeal, filed April 13, 2012, by the Appellees James Davis d/b/a Auto Recyclers, Ferydoon Asgari, and AR & BA, LLC (the "Motion"). No response to the Motion per se has been filed, but on April 20, 2012, the pro se Appellant Peter Coulter filed his Memorandum Brief for BAP 12-11, 12-12, 12-13 (sic).[1]

[1] We interpret the Brief to mean that Appellant intends for it to be filed in the instant appeal, as well as in two other appeals he recently filed with the Court, CO-12-011 and CO-12-014 (Appellant is not a party to an appeal styled 12-12). Our docket in the instant appeal reflects that the Brief is deficient in that it lacks a table of contents, table of cases, statutes, and other authorities, or statement of basis of jurisdiction. No appendix was ever filed. Fed. R. Bankr. P. 8009(b). This Order refers to the filing of the Appellant's Brief merely to the extent that it denies that this appeal is interlocutory. Brief at 5. For the reasons set forth

(continued...)

Background

Appellant filed his Chapter 13 bankruptcy petition on May 26, 2011. On February 27, 2012, Appellant commenced this appeal by filing a notice of appeal from one component of the bankruptcy court's February 13, 2012, minute entry #235 (the "Minute Entry"), denominated by Appellant as "Order Denying Proof of Claim & Standing."[2] *See* Notice of Appeal. Although not specified in the Notice of Appeal, later that day, the bankruptcy court entered its Order on Debtor's Motion to Reconsider Order of 1/27/2011 (sic) (the "Order"), which ripened the appeal from the Minute Entry (which was indisputably premature) into an appeal from an actual, formal order of the court.

The Order addressed Appellant's oft-repeated argument that he should not be subject to a Rule 2004 Examination because the parties seeking to conduct it lacked standing to file their proof of claim in his bankruptcy case. Appellant has raised this argument in various motions for protective orders, all of which were denied by the bankruptcy court.[3]

The Order enunciated the basis of Appellees' standing as parties in interest to conduct a 2004 Examination of Appellant, and clearly specified that the

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[1] (...continued)
herein, we disagree.

[2] The Minute Entry was from a status conference addressing several subjects at issue in Appellant's bankruptcy case; to wit: (1) the Motion to Reconsider Order of 1/27/2011 (sic), which is the subject of the instant appeal; (2) the Motion to Recuse Judge Michael E. Romero Supported by Affidavit (which was the subject of BAP Appeal No. CO-12-014, dismissed on April 2, 2012); (3) the Forthwith Renewed Motion for Court to Investigate Fraud on the Court and Obstruction of Justice by Raymond Goodwin and Associates; and (4) the Notice of Review by National Archives and Records Administration.

[3] Indeed, we dismissed as interlocutory Appellant's prior appeal from the bankruptcy court's Order and Notice of Rescheduled Hearing entered September 9, 2011, which denied, *inter alia*, Appellant's motion for a protective order to stay his Rule 2004 examination that was then scheduled for September 29, 2011. *See* Order Denying Motion for Leave to Appeal and Dismissing Appeal, in *In re Coulter*, BAP Appeal No. CO-11-089 (10th Cir. BAP Oct. 11, 2011).

Examination was to occur no later than March 5, 2012.

The Motion to Dismiss

This Court has jurisdiction to hear appeals from final orders and, with leave of court, interlocutory orders. 28 U.S.C. § 158; *Personette v. Kennedy (In re Midgard Corp.)*, 204 B.R. 764, 768 (10th Cir. BAP 1997). An order is considered final if it "'ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.'" *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 712 (1996) (quoting *Catlin v. United States*, 324 U.S. 229, 233 (1945)). We agree with Appellees' contention that the Order is interlocutory. *See Summit Med. Assocs. v. Pryor*, 180 F.3d 1326, 1334 (11th Cir. 1999) (orders determining standing are interlocutory); *In re Vance*, 165 F.3d 34, 1998 WL 783728 (7th Cir. Nov. 2, 1998) (citing *In re Blinder, Robinson & Co.*, 127 B.R. 267 (D. Colo. 1991) as authority that the majority of courts considering the issue have held that orders allowing 2004 examinations, like discovery orders, are interlocutory); *In re Luna*, 2011 WL 7140067, Case. No. 2:11-cv-02229 (D. C.D. Cal.) (orders authorizing 2004 examinations are akin to discovery orders, which are not final); *Joseph v. Lindsey (In re Lindsey)*, 212 B.R. 373, 374-75 (10th Cir. BAP 1997) (per curiam) (discovery orders are not final and the collateral order doctrine does not apply to them).

And, as this Court has stated:

> Leave to hear appeals from interlocutory orders should be granted with discrimination and reserved for cases of exceptional circumstances. Appealable interlocutory orders must involve a controlling question of law as to which there is substantial ground for difference of opinion, and the immediate resolution of the order may materially advance the ultimate termination of the litigation.

Personette, 204 B.R. at 769 (citing 28 U.S.C. § 1292(b)). The Appellant bears the burden of showing that the bankruptcy court's order meets these requirements, *see In re Blinder Robinson & Co., Inc.*, 132 B.R. 759, 764 (D. Colo. 1991). We will independently evaluate whether the standard for leave to appeal the instant

Order has been met.

Based on the record before the Court, the Order does not involve a controlling question of law as to which there is substantial ground for difference of opinion. It is plain that immediate resolution of the Order will not materially advance the ultimate termination of the litigation. Allowing an appeal at this juncture will not further the Appellant's bankruptcy case or result in an efficient use of judicial resources.

Conclusion

Accordingly, it is HEREBY ORDERED that:

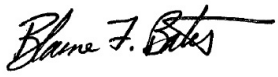
(1) The Motion is GRANTED.

(2) This appeal is DISMISSED.

(3) All deadlines in the appeal are VACATED.

(4) Appellant's April 23, 2012, Response and Motion to Reinstate Case and for Extension of Time to File Opening Brief is DENIED AS MOOT.[4]

For the Panel:



Blaine F. Bates
Clerk of Court

[4] We note that BAP Appeal No. CO-12-014, which was filed by Appellant from the bankruptcy court's order denying Appellant's motion to recuse, was dismissed as interlocutory on April 2, 2012. It is possible Appellant intended this Response and Motion to Reinstate Case and for Extension of Time to File Opening Brief to relate to that appeal, and not the one at bar; however, as the mandate in CO-12-014 issued on April 17, 2012, we no longer possess jurisdiction over it in order to afford Appellant any relief he might seek in regard thereto.